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OCTOBER TERM, 1978

~~77-1865 and~~ 78-156

CHARLES BONANNO, JR.,

Petitioner

v.

STATES OF AMERICA

STATES OF AMERICA,

Petitioner

v.

GH J. ADDONIZIO

STATES OF AMERICA,

Petitioner

v.

LAN and THOMAS M. FLAHERTY

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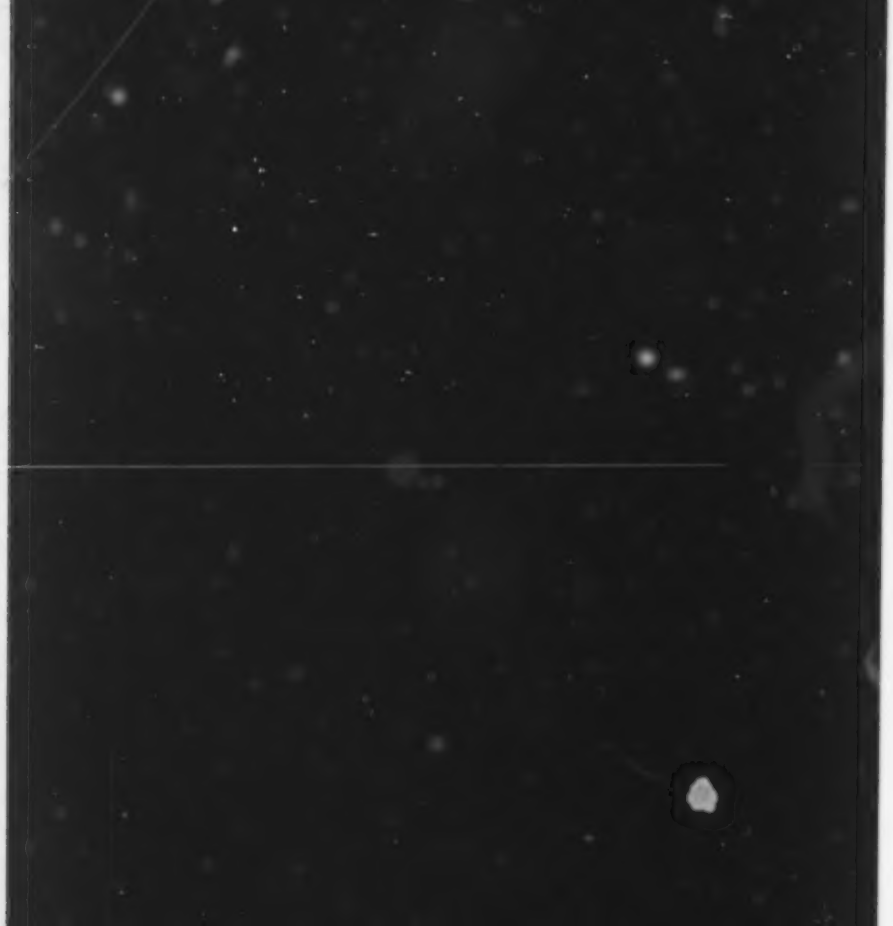
orari to the United States Courts of the Ninth and Third Circuits

Regulation Cited

Other Authorities Cited



IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

Nos. 77-1665 and 78-156

JOSEPH CHARLES BONANNO, JR.,

Petitioner

v.

UNITED STATES OF AMERICA

UNITED STATES OF AMERICA,

Petitioner

v.

HUGH J. ADDONIZIO

UNITED STATES OF AMERICA

ion Presented

g Court had jurisdiction pursuant
5 motion to vacate and correct a
ere the import of that sentence,
, has been changed to defendant's
lly revised parole decisionmaking
adopted, published and imple-
ntencing and prior to defendant's
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tatement

Procedural Background of Hugh J. Addonizio

ntenced in September 1970 to a
years pursuant to Title 18 U.S.C.
ary fine in the amount of $25,000.
for parole on July 3, 1975 after
of his term. On June 2, 1975, an
ng was conducted by two hearing
the hearing, the hearing officers
zio what he had been previously
d work supervisor at the

the hearing officers, Mr. Addonizio was advised that the officers declined to rule on his parole application and that the matter was being referred to the Regional Office of the Parole Board in Philadelphia. Thereafter, Mr. Addonizio was advised that the Regional Board had further declined to make a ruling and the application had been sent to the National Board in Washington. On July 8, 1975, three members of the National Board in Washington denied Mr. Addonizio's application and set January 1, 1977 as his next eligibility date (A. 38-39). The reasons given for the denial were:

> "After careful consideration of all relevant factors and information presented, it is found that a decision outside the guidelines at this consideration appears warranted because the offense was part of a large scale or organized criminal conspiracy. Further, the offense behavior consisted of multiple separate offenses." (A. 13)

After the denial of his parole application, Mr. Addonizio was advised that a designation of "special offender" on his file had made the salient factor quotient and the Parole Board guidelines inapplicable to his case (A. 39)[1]. He had previously been advised that the same designation had

As a result, Mr. Addonizio filed a petition for habeas corpus in the jurisdiction of incarceration seeking the removal of the "special offender" designation based upon *Catalano* v. *United States,* 383 F. Supp. 346 (D. Ct. 1974). On May 3, 1976, the District Court for the Middle District of Pennsylvania ordered the "special offender" designation removed from Mr. Addonizio's records. At the same time the court found that the designation had not resulted in the denial of parole; but rather, that parole had been denied based upon the Board's evaluation of Mr. Addonizio's offense. The court further permitted Mr. Addonizio to be classified as a "central monitoring case" in accordance with new Parole Board procedures. *U.S. Ex Rel. Addonizio* v. *Arnold,* 423 F. Supp. 189 (M.D. Pa. 1976)

On December 8, 1976, a second institutional hearing was held by two hearing officers of the Parole Commission. This hearing was an extremely short one. The hearing officers did not question Mr. Addonizio or have any discussion with him in an effort to evaluate his progress and rehabilitation or his prospects for successful reintegration into society in the event parole was granted. They now advised him that they had no authority to grant his application since he was designated a "central monitoring case". They further told him that with him it was not a question

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On April 27, 197
ent's 28 U.S.C. §22
and resentencing

[3] By that time *Kor*
1976) and *U. S.* v.

Mr. Addonizio had served five years and
his ten year sentence. The court, based upo
of the Third Circuit cases of *United States*
F. 2d 1005, rehearing denied, 542 F. 2d 628
and *United States* v. *Somers*, 552 F. 2d 108
found it had jurisdiction under 28 U.S.C.
its reasonable intention and expectations
sentencing had been frustrated by the new p
making standards and procedures adopted
sentencing.

Mr. Addonizio was a first offender. At t
conviction he had been serving his second t
of the City of Newark. Prior thereto he
guished record of public service, including
as a member of Congress and had been a hi
World War II veteran. Mr. Addonizio wa
at the time of sentencing and is now 64 (A. 5

The court specifically stated that it had
sidered the severity of respondent's crime
the harsh ten year sentence and had expect
to receive "a meaningful parole hearing—th
mination based on his institutional record

edures not in existence and not contemplated at of sentence.[5]

donizio was released from prison on April 28, uant to the District Court's order of the preced- He was reincarcerated pending appeal on May 3, rder of the Third Circuit and then re-released 2, 1977 by order of this Court.

not forming the basis of the District Court's finding of and ruling, the District Court added that it felt "the icial conscience" demanded its ruling. In a footnote, the ed out that one of Mr. Addonizio's co-defendants, who ecisely the same sentence as Mr. Addonizio, was released n March 1976, after having served four years—slightly one-third of his ten year sentence (78-156 Pet. App. 32a). noted further that a second co-defendant, also with the ce was released on parole in early April 1976 (A. 41-43). , the District Court was undoubtedly mindful of the fact original fifteen defendants named in the indictment, only ed on trial as of the close of the government's case.

The Third Circuit was presented with a series of cases including the instant case, and *Geraghty* v. *U.S. Parole Commission,* 579 F. 2d 238 (3rd Cir. 1978) which required it to make a thorough and careful analysis of parole decisionmaking practice and procedure before and after the 1972-3 changes and the PCRA. As a result the Third Circuit developed a full understanding of the fundamental nature of the change and its adverse impact on certain defendants sentenced prior to 1972-3. It is this understanding which led to the proper determination, entirely consistent with current case law, of the need for, and availability of; a remedy under §2255.

mates for their exemplary behavio
The underlying philosophy of par
administrative mechanism to mitiga
sentencing process and to extend "a
will" as consistent with the safety of

The amendments to the Parole
made in the 1950's demonstrate co
intention that parole decisionmaking
ments of rehabilitation and the thr
was to assure that decisions would
priate times for judging rehabilitati

In 1951, then Section 4202 of Tit
permit, among other things, parole
a term or terms of over 180 days ins
to offenders committed for more th
ously provided by Section 4202. A
the amendment was to correct the a
sentenced or convicted of a felony f
could be released on parole after ser
while a prisoner sentenced to a year
to serve the entire year less good
about ten months, before being re
this issue, Senate Report No. 524 co

degree of rehabilitation that would warrant the parole of a prisoner. (Emphasis added) 1951 U.S. Code Cong. Service, pages 1676-1677.

A letter attached to the report from the Justice Department recommending passage of the amendment states:

> "There have been numerous cases of prisoners who have learned their lesson, have made an outstanding response to the prison rehabilitation program, and would, in all probability have made good law abiding citizens if released at the proper time, but, as a result of the delay in effecting their release until one-third of their sentences had been served became poor parole risks at the time their eligibility date arrived." Id. at 1678.

In 1958 in its discussions of what became Title 18 U.S.C. 4208(a)(1) and 4208(a)(2), [now 4205(b)(1) and (b)(2)], which permitted consideration for parole prior to the one-third point of the sentence, it is again clear that Congress was operating under the assumption that decisions to grant parole would be based upon the Board's assessment of rehabilitation as gleaned from institutional performance.[12]

belief that institutional record
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ed, the Court wrote:

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* * *

Parole Board's interest and its
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d, 318 F. 2d 225, 237, 242 (D.C.

uit wrote:

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While in 1970, as today, there were three major sentencing alternatives available to the courts,[13] the choice of sentencing alternative affected only the timing of eligility for parole and not the criteria used in the decision making process. *Tedder* v. *Bd. of Parole,* 527 F. 2d 593, 594 (9th Cir. 1975); *United States* v. *McBride,* 560 F. 2d 7, 9-10 (1st Cir. 1977); *Dioguardi* v. *United States,* 587 F. 2d 572 (2nd Cir. 1978); *Ruip* v. *United States,* 555 F. 2d 1331 (6th Cir. 1977); *Geraghty* v. *United States Parole Commission,* 579 F. 2d 238 (3rd Cir. 1978).

The only statutory provision in 1970 dealing with the criteria used in parole decisionmaking was 18 U.S.C. 4203 which provided:

> "If it appears to the Board of Parole from a report by the proper institutional officers or upon application by a prisoner eligible for release on parole, that there is a reasonable probability that such prisoner will live and remain at liberty without violating the laws, and if in the opinion of the Board such release is not incompatible with the welfare of society, the Board may in its discretion authorize the release of such prisoner on parole."

Section 4202 of Title 18, dealing with a sentence of a

in which he is confined, may be released on parole after serving one-third of such term or terms or after serving fifteen years of a life sentence or of a sentence of over forty-five years."

B. Subsequent to the imposition of Mr. Addonizio's sentence there was a radical change in the criteria applied in parole decisionmaking.

The criteria used in parole decisionmaking were radically changed first by the Parole Board in 1972-73 and then confirmed by the enactment of the Parole Commission and Reorganization Act of 1976. The present §4206 (a) of Title 18 provides:

> "If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, *and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner determines*:
>
> (1) *That release would not depreciate the seriousness of his offense or promote disrespect for the law; and*

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It is the view of the Conferees th
States Parole Commission is joined
the courts, the Congress and the e
agencies in an effort to instill respe
The Parole Commission efforts in t
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of only those who meet the criteria

"Determinations of just punishment a
parole process, and these determinat
easily made because they require a
sense of justice. There is no body
empirical knowledge upon which pa
makers can rely, yet it is important
process to achieve an aura of fairn

(1976); H. R. Conf. Rep. No. 94-838, supra, 25-
(1976).[16]

overnment asserts that, "In enacting the Parole
ion and Reorganization Act, which endorsed the
ion's use of the guideline and required continued
nat device, Congress emphasized that the stand-
release on parole were not being changed from
law." (GB 58-59). One need only to examine with
citations set forth by the government in support
proposition to conclude that the opposite of the
ent's contention is true. The govermnent's cita-
particularly those appearing and quoted in Foot-
(GB 59) are not directed at the Parole Commis-
Reorganization Act as passed and signed into
rather were directed to H.R. 5727, the House of
tatives ancestor of the PCRA. The relevant

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her Congress was wise in inserting these considerations
for parole decisionmaking is not relevant to the question
by this case. That these were new considerations applied
e Parole Commission in its pilot project in 1972 and then
in 1976 by the PCRA is, however, clear. "The guide-
thus represents two major departures in previous parole
ecisionmaking. It establishes explicit criteria which, in
determine the parole release date. And in its choice of

Finding that the new guidelines had frustrated the intentions and expectations of the sentencing judge at the time of imposition of sentence, the court held that Title 28 U.S.C. §2255 provided an appropriate vehicle for granting relief.

In denying rehearing, the Third Circuit made the limitations of its *Salerno* ruling clear; stating:

> "Our holding is narrow and does not vest sentencing courts, as alleged by petitioner, 'with power of a super parole board'. Our decision does, however, 'permit the district court to correct a sentencing error where the import of the judge's sentence has in fact been changed by guidelines adopted by the Parole Board . . . subsequent to the imposition of that sentence.' *United States* v. *White,* 540 F. 2d 409, at 411 (8th Cir. 1976)"[19]

We suggest that the court could have as correctly stated: "While our holding does not vest sentencing courts 'with the power of a super parole board', the

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[19] Concerned about the impact of its ruling on judicial time the Court made the following observation in the original *Salerno* opin-

upon institutional record and attit
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1976); Parole Commission and Reorganization Act, Pub. L. No. 94-233, 90 Stat. 219 (1976) [codified in 18 U.S.C. §4201 et seq. (Supp. 1977)]. For example, in addition to consideration of the institutional record and the probability of recidivism, there now seems to be a very much heightened emphasis on 'the nature and circumstances of the offense.' See, e.g. 28 C.F.R. §2.18 (1976). Compare 28 C.F.R. §2.2 (1971); note 3 supra.

It is clear that this new emphasis has had a substantial adverse impact on the petitioner's eligibility for parole. He has now served more than one-half of his ten-year sentence and has twice been denied parole, despite his excellent institutional record and a very low likelihood of recidivism. Both denials were predicated primarily on the nature and circumstances of the petitioner's offense. See United States ex rel. Addonizio v. Arnold, 423 F. Supp. 189, 190 n.4 (M.D. Pa. 1976); Supplemental Brief for Petitioner, Exhibit A.

Thus, it is obvious that the petitioner has not received the type of meaningful parole hearing contemplated by the Court at the time of sentencing.

parole standards and proceedures,
ıe frustration of this Court's sen-
ons and intent." (78-176 Pet. App.

stics cited in support of the proposition
] prisoners were not released until well
imum sentence" (GB 55-56) are both
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highest proportion of their sentence be-
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e exact one-third point because of the
nd most importantly, they contradict the
viously published by the Parole Board.
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The rule of the Third Circuit remains as set forth in the second *Salerno* opinion and permits "the district court to correct a sentencing error where the import of the judge's sentence has in fact been changed by guidelines adopted by the Parole Board . . . subsequent to the imposition of that sentence"[23] as may be modified only by the greater understanding the Third Circuit has acquired since the *Salerno* case of the extent of the change actually effectuated in parole decisionmaking criteria and procedures.[24]

Since the *Salerno* and *Addonizio* decisions, the Third Circuit has thoroughly analyzed the fundamental change in parole philosophy and criteria applied in parole decisionmaking. *Geraghty* v. *U. S. Parole Commission,* 579 F. 2d 238 (1978), petition for cert. pending No. 78-572. We submit that the principle of the Third Circuit §2255 cases applies only in the event of such a fundamental change in policy; which change in policy in turn changes the import of the sentence to the detriment of the defendant. We further submit that it is fair to say that in the 69 years since the federal government has had parole legislation, the change which gave rise to the Third Circuit cases is the first and only such fundamental change in philosophy and criteria of federal parole decisionmaking. Cf. 121 Cong.

Rec. 15701 (1975); see, generally, Project, *Parole Release Decisionmaking and the Sentencing Process,* supra.[25]

D. Based upon the change in parole decisionmaking criteria and its effect on the Addonizio sentence, §2255 relief was appropriate.

The scope of §2255 relief is identical to that of habeas corpus. *Davis* v. *U. S.,* 417 U.S. 333, 343 (1974); *Hill* v. *U. S.,* 368 U.S. 424 (1962); *U. S.* v. *Hayman,* 342 U.S. 205 (1952). We respectfully submit that the Ninth Circuit in *Andrino* v. *U. S. Board of Parole,* 550 F. 2d 519 (1977) was in error in denying §2255 relief on the ground that §2241 provided the appropriate remedy.

We respectfully submit that other circuits declining to exercise §2255 jurisdiction in circumstances similar to those presented by the Addonizio case did so from a lack of full understanding of the nature and scope of the changes which took place. The concerns expressed by the First, Second and Sixth Circuits that a decision finding §2255 jurisdiction would mean authority to vacate and re-

[25] This is not to say that the extreme formulation of the "re-

sentence each time well founded.[26]

The change whi Mr. Addonizio's m ing philosophy; qu revisions in the gu It is the type of f the near future.

It created a situ circumstances whi *Lewis*[27] and the S grant §2255 relief.

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The significance of assumptions as to t
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the individual inmate can hardly be de
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While *Marrero* talks in terms of par
must be realized that parole eligibility
had a distinctly different meaning than
donizio was considered for parole. While
that the ultimate release decision, whet
1972-'73, was and remains committed to
the parole authorities, there is today a di
philosophy and set of criteria controlling
that discretion than was the case in 1970.

The simple operative truth is that in
parole eligibility would have been determi
of criteria that, given his character and ba
the only reasonable expectation was releas
point of sentence. The change in parole
criteria meant parole would not be, and it